उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(५५)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.504/2001

APPELLANTS (In Jail)
1. Vishnu Yadav, aged about 55 years, s/o Adhir Yadav.
2. Bharat Yadav, aged about 19 years, s/o Vishnu Yadav

Both residents of Village Gandaikala, P.S. Badla, Distt. Kawardha, C.G.

Vs

RESPONDENT State of Chhattisgarh through THE District Magistrate, Kawardha.

Present:
Mrs. Usha Chandrakar, Advocate for the appellants.

Mr. U.N.S. Deo, Addl. Public Prosecutor for the respondent-State.

ORAL JUDGMENT
(2nd July, 2007)

Per L.C. Bhadoo, J:

This appeal is directed against the judgment of conviction and order of sentence dated 26th March, 2001 passed by learned Additional Sessions Judge, Khairgarh, Camp Kawardha in S.T. No.164/99 whereby learned Additional Sessions Judge after holding

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	accused/appellants Vishnu & Bharat (father-in-law & brother-in-law of deceased Bhagwati Bai) guilty for commission of offence under Sections 302 & 201 of the IPC, sentenced each of the accused/appellant to undergo R.I. for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months & R.I. for 3 months and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months respectively. However, accused Shatrughan Yadav (husband of deceased) has been acquitted of the said charges. The trial court further directed that all the sentences shall run concurrently. Case of the prosecution, in brief, is that accused Shatrughan Yadav, is husband of deceased, accused Vishnu Yadav is father-in-law of deceased & accused Bharat Yadav is brother-in-law of deceased. Deceased Bhagwati Bai was married to Shatrughan Yadav about 8 years prior to the date of incident. She started coming to her in-laws house about three years prior to the date of incident. Further case of the prosecution is that accused Vishnu Yadav, father-in-law of deceased Bhagwati Bai, used to harass her, as he was seeking sexual favour from Bhagwati Bai and on the other hand, Shatrughan Yadav, husband of deceased, used to object and ask his wife not to accede request of his father. On 3.7.1999 i.e. the date of incident, accused	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(46)

मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Vishnu gave merg intimation (Ex.P-17) in the Police Station Bodla to the effect that today his son Shatgrughan Yadav, husband of deceased, had gone to Pandritarai market, half an hour thereafter about 3.00 p.m. he also went to Pandritarai market. His younger son Bharat Yadav on account of illness was in the house. Bhagwati Bai was also in the house. Wife of Bharat namely Kamodni Bai had gone to agricultural field. When he was returning from the market, Ashok, who was coming to call him, met him in Pandritarai market and said that Bhagwati Bai is not well, therefore, he should come to the house. Thereafter, he came to his house along with Ashok on his bicycle and saw that numbers of persons were present at his house. Along with them he went inside the house and saw that Bhagwati Bai was hanging from the wooden shaft of the roof with the help of Sari. Her both legs & knee were touching the ground, her one hand was also touching the ground thereby she committed suicide by hanging herself. Receiving this report, the S.H.O., Police Station Bodla registered Merg No.12/99, left for the scene of occurrence, after giving notice (Ex.P-11) to the Panchas prepared inquest (ExP-12) on the body of Bhagwati Bai. Site Plan (Ex.P-13) was prepared by Halka Patwari. Body of deceased Bhagwati Bai was sent for postmortem examination to Primary Health Centre, Bodla where on 4.7.1999 Dr. M	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

.L. Watchkar & Dr. R.K. Buxy conducted postmortem and prepared report Ex.P-6. They opined that cause of death appears asphyxia, viscera has been preserved. However, they did not give any definite opinion whether the death was homicidal or suicidal.

Vide request dated 18.7.1999 the Investigating Officer made queries under Ex.P-17A from the doctor that how the swelling was present on the neck and injury on the right side of skull can be sustained, whether these injuries can be caused by hanging? ; How the injuries found on the chest & shoulder can be caused? ; It has been said that neck of deceased was found knotted with the help of Sari, whether such type of knot can be found on the neck of a person committing suicide by hanging. Last query was that death was asphyxial, but it has not been mentioned that whether the death is homicidal or suicidal. In reply to Query No.1, the doctor has stated that such type of injury was not possible by suicidal hanging. In respect of injuries mentioned in Item No.2 i.e. chest & shoulder the doctor has stated that the same are due to constriction of neck. Knots described in the report usually not found in suicidal hanging. About type of death, findings are suggestive of asphyxia due to strangulation of neck. During police custody accused Vishnu gave memorandum (Ex.P-1) regarding the place where he has kept the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(48)

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

towel, which was alleged to be used for strangulation of Bhagwati Bai, and in pursuance of that a yellow colour towel was seized under Ex.P-2.

After completion of usual investigation, charge sheet was filed against three accused persons in the Court of Chief Judicial Magistrate, Kawardha for commission of offence under Sections 302 & 201 of IPC, who in turn committed the case to learned Sessions Judge, Rajnandgaon from where learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charges against the accused/appellants examined 15 witnesses. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the material appearing against them in the prosecution case and each of the accused/appellant has stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellants herein, as aforementioned. However, learned Additional Sessions Judge has acquitted co-accused Shatrughan Yadav.

GRPRJ — FS/24 ...07 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

We have heard Mrs. Usha Chandrakar, Advocate for the appellants and Mr. U.N.S. Deo, Addl. Public Prosecutor for the respondent/State.

Having heard learned counsel for the parties, we have perused the record and judgment of the trial court. In this case there is no ocular or direct evidence connecting the accused persons with the crime in question and the whole case rests upon the circumstantial evidence. In order to rest the conviction based on the circumstantial evidence, as per decision of the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220**, the circumstantial evidence must satisfy the following tests:

a. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
b. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
c. the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
d. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The prosecution has tried to establish the charges against the accused/appellants based on the following circumstances;

GRPRJ — FS/2 2007 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

I. That, accused Vishnu, father-in-law of deceased, used to harass deceased Bhagwati to seek sexual favour.

II. That, the towel, with which accused Vishnu said to have strangulated the deceased, was seized at the instance of accused Vishnu.

1st Circumstance;

So far as this circumstance is concerned, there is not an iota of evidence against accused Bharat Yadav that how he was responsible for the murder of Bhagwati Bai. As far as accused Vishnu is concerned, to establish first circumstance against him the prosecution has examined Raghav (PW-9), father of deceased, Kalpan Bai (PW-10), mother of deceased & Keshru (PW-11), uncle of deceased. PW-9 Raghav has stated that Bhagwati Bai was married to accused Shatrughan Yadav eight years prior to the date of incident. Three years prior to the date of marriage she started going to her in-laws house. There was a child, aged about 6 months old, from the wedlock of Shatrughan & Bhagwati. He has further stated that whenever Bhagwati Bai came to their residence, she used to tell her mother that his father-in-law is harassing her and pressurizing her to sleep with him. In turn, his wife Kalpan Bai disclosed this fact to him, but in the cross-examination this witness has stated that this fact was not

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

disclosed by him to anyone. Moreover, he has stated that husband & father-in-law of his daughter used to come to their place and in turn, they also used to go to their place. When he used to meet them, he never complained them or anybody else. He has further stated that from the date of incident he stayed in the village of occurrence. He returned on 3rd day after cremation of his daughter. At that time also he did not complaint to anybody and he directly came to his village. For the first time, he is disclosing this fact in the court. He never lodged any report regarding the conduct of accused Vishnu any other place.

PW-10 Kalpan Bai, mother of deceased, has stated as and when her daughter used to come to their house, she used to enquire about her wellbeing, whereupon, she used to disclose that her father-in-law is harassing her for sleeping with him in the night and her husband is compelling her to sleep with him in the night. She disclosed this fact to her husband. After delivering a child, her daughter again came to their house and on enquiry she again disclosed the same thing. Thereafter her husband went along with her daughter to drop at her in-laws place. On the date of incident, Ramji came to their place and informed about the ill health of Bhagwati Bai. Therefore, next day morning she along with her husband went to the house of accused

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(52)

मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन भामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

persons, there they saw the body. In the cross-examination, this witness has stated they were regularly going to in-laws house of their daughter and in-laws of the deceased also used to visit their house. Their son-in-law also used to come from time to time to their house, but before the death of their daughter they never complained to anybody.

PW-11 Keshru, uncle of deceased, has stated that two months prior to the date of incident Bhagwati Bai came to his residence, she requested him to come to their residence when he enquired from her that why she is insisting him to come to their residence, then she disclosed that her father-in-law is harassing her and asking her to sleep in his bedroom, for applying oil on hands & feet. She should behave like a wife with him. Then he replied that within 2-3 days he is coming to her village. Thereafter, he met Vishnu in Village Palansari and asked him as to why he is harassing Bhagwati Bai, he will convene a meeting of community, on which Vishnu replied that he should not convene a meeting and in future he will not harass Bhagwati Bai. But in cross-examination he has stated that he has not disclosed this fact to anybody even when he went to the place of occurrence, then also he did not disclose this fact to the police.

GRPRJ — FS/... 2007 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(53)

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Evidence of the above three witnesses is not worth reliance for the reason, that the mother, father and uncle of deceased have stated that even after coming to know about the harassment being made, the accused persons used to visit their place and in turn, they also used to visit the place of accused persons but they never complained or tried to persuade accused Vishnu as to why he is indulging in such activity and why he is harassing their daughter. Moreover, after happening of the incident they went to the place of accused persons and stayed there for 3 days and during that period also they did not disclose this fact to the police. Even the police recorded the statement of Keshru (PW-11) on 16.7.1999, whereas, the incident was of 3.7.1999. No explanation has been offered to the effect as to why they did not disclose to the police at the time when they visited the village of accused that accused Vishnu used to harass deceased for sexual favour. Even the evidence of PW-11 Keshru is doubtful for the reasons that he has not stated that he discussed these things with his brother i.e. father of deceased or anybody else. He has also stated that he was present at the time of incident in the village of accused, but he did not disclose to the police. Moreover, his statement was recorded by the police only after 13 days of the incident. Therefore, the delay of recording statement of this witness	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक..... **सन् 200**

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन भामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

by the police as also not disclosing to his brother or anybody else the fact disclosed by Bhagwati Bai to him makes the evidence of this witness unreliable.

When accused Vishnu was regularly harassing the deceased, the above witnesses might have persuaded accused Vishnu not to indulge in such activity and non-disclosure of the conduct of Vishnu to the police at the time of incident particularly being the close relatives of the deceased i.e. mother, father & uncle, makes their evidence unreliable and the same also does not find corroboration from any other circumstantial evidence.

Even the Investigating Officer was also not sure about the involvement of the accused persons in committing murder of Bhagwati Bai that is why when the Station House Officer, Police Station Bodla registered the FIR after seven days of the commission of crime he registered the offence under Section 306 of the IPC not under Section 302 of IPC. Accused persons were regularly in touch with the police and only on 24.7.1999 after 21 days memorandum of accused Vishnu was recorded. Even the doctor was not sure about the nature of death that is why initially he did not mention in the postmortem report that the death was homicidal and even in the reply given to the

GRPRJ — FS/246—7 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(53)

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

queries made by the Investigating Officer, the doctor was not definite in his opinion about the nature of death.

Therefore, the above facts and circumstances of the case are of suggestive nature that the investigating agency till 16.7.1997 was not sure about the nature of death and even thereafter they were not able to collect the cogent and clear evidence in order to connect the accused persons that they had committed murder of Bhagwati Bai. Even when the allegations were against accused Vishnu that he was harassing the deceased and asking her for sexual favour, then why her husband and Bharat (brother-in-law) have been roped in this heinous crime. No evidence coming forth rather the case of the prosecution is that Shatrughan was advising his wife Bhagwati Bai (since deceased) not to oblige his father and she should remain in his bedroom only.

Perusal of FIR shows that the same is also contradictory, at some places it has been mentioned that Vishnu as also her husband Shatrughan used to harass her to oblige is father Vishnu and go to his bedroom, whereas, later on, the case is developed that Shatrughan used to ask Bhagwati Bai to remain with him in his room. Therefore, the evidence of PW-9, PW-10 & PW-11 is not worth reliance and does not inspire confidence of the Court in order to connect the accused Vishnu & Bharat with the crime in question.

GRPRJ — FS/2 7 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन भामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	2nd circumstance; So far as the recovery of towel is concerned, in the first instance such towels are generally available at the residence, moreover, no specific mark was on the towel to establish that this towel was used for strangulation in order to connect accused Vishnu with the crime in question. Therefore, recovery of towel from the house of accused at his instance is of no use or help for the prosecution to connect the accused with the crime in question. For the foregoing reasons, the conviction of accused Vishnu & Bharat cannot be sustained, as the same is not based on any legal clinching evidence. In the result, the appeal filed by the appellants succeeds and the same is allowed. Conviction of appellants Vishnu Yadav & Bharat Yadav under Sections 302 & 201 of the IPC and sentences imposed under those sections are hereby set aside. They are acquitted of that charges. It is stated that the appellants are in detention since July, 1999, therefore, they be set at liberty forthwith, if not required in any other case. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **DHIRENDRA MISHRA** **Judge**

Roshan/-

GRPRJ — FS/246— 2/2007 — 50,000.